

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: GROLLITSCH, Helmut, et al

SERIAL NO.: 10/672,402

ART UNIT: 3653

FILED: September 29, 2003

EXAMINER: Hageman, M.

TITLE: METHOD AND APPARATUS FOR DETECTING A CRACKED OR BROKEN CASE

Amendment E: REMARKS

Upon entry of the present amendments, Claims 39-42 and 44-51 remain in this case. Claims 39 and 46 have been amended. The dependent claims have been re-presented. Reconsideration of the rejections, in light of the forgoing amendments and present remarks, is respectfully requested. The present amendments have been entered for the purpose of distinguishing the present invention from the prior art.

In the Office Action, it was indicated that Claims 39-42, 44 and 45 were rejected under 35 U.S.C. § 103(a) as being obvious over the Mooij '170 patent in view of the Auer '765 patent. Claims 46-51 were rejected under 35 U.S.C. § 103(a) as being obvious over the Mooij '170 patent in view of the Huang patent.

In response to the rejection, Applicant has corrected Claim 39. Claim 39 now includes the subject matter of original Claims 1-9 with the incorporation of Claims 2, 3, 5, 6, and 7, in addition to the interdependent Claims 1, 4, 8, and 9. The roller element of the piston in the ejection means was not disclosed by the Mooij '170 patent and the Auer '765 patent. The current rejection acknowledges that the Mooij '170 patent lacks the disclosure of this element. Even in combination with the Auer '765 patent, the ejection means of the present invention is not made obvious. The Auer '765 patent discloses a pusher and hydraulic ram for displacement from the conveyor belt. The

simple pusher or piston is disclosed without any suggestion for an additional roller element. The present invention discloses a unique element that can allow adjustment for the size of the case by roller, instead of adjusting stops in the control mechanism of the pusher or hydraulic ram. The original subject matter of Claims 1, 4, 8 and 9 were previously determined to be allowable subject matter over the Mooij '170 patent and Auer '765 patent in two previous Office Actions.

The original subject matter of Claim 9 was originally allowed in the first Office Action concurrent with consideration of the present prior art references. Applicant respectfully contends that the current independent Claim 39 now properly recites the allowed subject matter.

Claim 46 has been amended so as to distinguish the method from the prior art combination of the Mooij '170 patent and the Huang patent. Claim 46 now fully recites the subject matter of the step of ejecting in addition to the incorporated original subject matter. The step of ejecting as disclosed by the Mooij '170 patent relies upon a replacement unit with replacement cases. The Mooij '170 patent is ambiguous in the actual method of replacement. For example, it is not clear how a "good case" replaces the rejected case because the source of the "good case" is positioned adjacent the conveyor when the whole point of the testing is to ensure that a "good case" remains on the conveyor for processing. If there is already a supply of "good cases" independent from the conveyor, then the entire testing on the conveyor is not necessary. Additionally, the steps of the ejection are not obvious because there is no explanation of how the rejected case is actually removed. The present amendments now incorporate the steps for ejecting as originally disclosed in the specification for "ejector 38", related apparatus claim and Figure 1. The new claim language is not new matter because the pneumatic ram as the ejector was previously disclosed. This specific method of ejecting is not made obvious by the prior art combination. Applicant respectfully contends that Claims 46-51

of the present invention are still patentable over the Mooij '170 patent and Huang patent.

On this basis, Applicant contends that independent Claims 39 and 46 are now in proper condition for allowance. Additionally, those claims which are dependent upon these independent claims should also be in condition for allowance. Reconsideration of the rejections and allowance of the claims at an early date is earnestly solicited. Since no new claims have been added above those originally paid for, no additional fee is required. Applicant respectfully requests reconsideration of the claim language for allowance.

Respectfully submitted,

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